

Message Text

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ACTION IO-06

INFO OCT-01 ARA-06 EUR-08 ISO-00 AF-04 EA-06 NEA-06 RSC-01

L-01 FRB-01 OMB-01 TAR-01 SP-02 SWF-01 AGR-05 AID-05

CIAE-00 COME-00 EB-04 INR-05 LAB-01 NSAE-00 OIC-01

SIL-01 STR-01 TRSE-00 CIEP-01 CEA-01 SSO-00 NSCE-00

INRE-00 USIE-00 DODE-00 PM-03 H-01 NSC-05 PA-01

PRS-01 SS-15 DRC-01 /097 W
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O R 190144Z OCT 74

FM USMISSION USUN NY

TO SECSTATE WASHDC IMMEDIATE 6570

INFO USMISSION GENEVA

USMISSION EC BRUSSELS

USMISSION OECD PARIS

AMEMBASSY MEXICO

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DEPT PASS TREASURY FOR BRADFIELD

E.O. 11652: N/A

TAGS: UNCTAD, EGEN, ETRD

SUBJ: CHARTER OF ECONOMIC RIGHTS AND DUTIES

1. IRAQ OPENED TH OCT. 18 A.M. INVESTMENT SUB-
GROUP (ATTENDED BY THE G-77 AND GROUP B, BUT WITH MEXICO
CONSPICUOUSLY ABSENT) BY PRESENTING THE FOLLOWING TEXT:

EVERY STATE HAS FULL PERMANENT SOVEREIGNTY OVER
ITS WEALTH, NATURAL RESOURCES AND ALL (ITS) DOMESTIC
ECONOMIC ACTIVITIES. ACCORDINGLY, EVERY STATE HHAS THE
INALIENABLE RIGHT TO EXERCISE EFFECTIVE CONTROL
OVER THEM, INCLUDING THE RIGHT OF NATIONALIZATION OR
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TRANSFER OF OWNERSHIP TO ITS NATIONALS, AS WELL AS THE

RIGHT OF REGULATING, CONTROLLING AND SUPERVISING FOREIGN INVESTMENTS AND THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS WITHIN ITS JURISDICTION.

NO STATE MAY USE OR ENCOURAGE THE USE OF ECONOMIC, POLITICAL OR ANY OTHER TYPE OF MEASURE TO COERCE ANOTHER STATE UNDERTAKING SUCH MEASURES, IN ORDER TO OBTAIN FROM IT THE SUBORDINATION OF THE EXERCISE OF ITS SOVEREIGN RIGHTS AND TO SECURE FROM IT ADVANTAGES OF ANY KIND.

2. REJECTING THIS TEXT, GROUP B NOTED THE FAMILIAR PROBLEMS IF POSES, E.G., NO REFERENCE TO "INTERNATIONAL OBLIGATIONS", USE OF THE WORD "CONTROL", THE REFERENCE TO PERMANENT SOVEREIGNTY OVER "WEALTH" WITHOUT QUALIFICATIONS, ETC. IRAQ STATED THAT IT WOULD REPORT GROUP B REACTIONS TO THE G-77.

3. IN AFTERNOON MEETING OF SUB-GROUP, U.S. DEL PROPOSED TWO AMENDMENTS TO ALTERNATIVE 1 OF PAPER B REPORTED SEPTEL. THE AMENDMENTS WOULD HAVE GRANTED EVERY STATE FULL PERMANENT SOVEREIGNTY OVER ITS "NATURAL RESOURCES AND WEALTH," AND WOULD HAVE GIVEN EVERY STATE THE RIGHT TO "REGULATE AND EXERCISE AUTHORITY OVER" FOREIGN INVESTMENT AND THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS. U.S. DEL EXPLAINED (A) THAT THE "NATURAL RESOURCES AND WEALTH" LANGUAGE CONTAINED A MEASURE OF AMBIGUITY WHICH WOULD PERMIT GROUP B TO ASSERT THAT THE TEXT ONLY REFERRED TO NATURAL WEALTH, WHILE G-77 COULD MAINTAIN THAT ALL FORMS OF WEALTH WERE COVERED; (B) THAT THE "REGULATE AND EXERCISE AUTHORITY OVER" LANGUAGE WAS A CONSESSION TO THE G-77, AS IT WAS LANGUAGE EARLIER PROPOSED BY MEXICO; AND (C) THAT IT WOULD BE FORCED TO WITHDRAW BOTH PROPOSALS IF THE G-77 COULD NOT ACCEPT THE PARAGRAPH AS A WHOLE (A PARAGRAPH CONTAINING "INTERNATIONAL OBLIGATIONS" LANGUAGE AND ALSO AN OBLIGATION TO FULFILL INVESTMENT AGREEMENTS.) THE U.K. DEL AGREED, NOTING THAT IT TOO COULD ACCEPT THE AMENDMENTS ONLY IF THE REFERENCE TO COERCION IN THE PARAGRAPH WERE INCLUDED AS A SEPARATE PARAGRAPH, E.G., IN THE LIMITED OFFICIAL USE

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GENERAL PROVISIONS OF THE CHARTER, WHERE A PARAGRAPH APPEARS AS AN "ALTERNATIVE" TEXT (AS THE USDEL HAD SPECIFIED).

4. THROUGHOUT MORNING AND AFTERNOON SESSIONS GROUP B FIRMLY OPPOSED LINKING LANGUAGE OF COERCION TO THE TEXT ON NATIONALIZATION, AND MAKE IT CLEAR THAT IT WOULD NOT ACCEPT ANY LANGUAGE ON COERCION UNLESS IT

APPLIED TO ALL STATES. (NOTE THAT IRAQI TEXT PROSCRIBES COERCION AGAINST STATES "TAKING MEASURES OF NATIONALIZATION," BUT NOT AGAINST OTHERS.)

5. IN EVENING SESSION CHAIRMAN MULIRO (KENYA) PROPOSED THE FOLLOWING TEXT, WHICH GIVES GROUP B A "TWO-WAY" TEXT ON COERCION, BUT REJECTS GROUP B'S EFFORTS TO HAVE LANGUAGE ON COERCION APPEAR ELSEWHERE THAN IN THE NATIONALIZATION PARAGRAPH:

EVERY STATE HAS FULL PERMANENT SOVEREIGNTY OVER ITS NATURAL RESOURCES AND WEALTH AND ECONOMIC ACTIVITIES, INCLUDING THE RIGHTS OF USE AND DISPOSAL AND OF NATIONALIZATION. ACCORDINGLY, EVERY STATE HAS THE RIGHT TO REGULATE AND EXERCISE AUTHORITY OVER FOREIGN INVESTMENT AND THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS WITHIN ITS JURISDICTION, AND TO ENTER FREELY INTO FOREIGN INVESTMENT AGREEMENTS. ALL STATES SHALL FULFILL IN GOOD FAITH THE TERMS OF SUCH AGREEMENTS AND, IN RESPECT OF THE FOREGOING RIGHTS, THEIR INTERNATIONAL OBLIGATIONS; ANY FORM OF COERCION BY ANY STATE OF ANOTHER STATE IN ORDER TO OBTAIN FROM IT THE SUBORDINATION OF THE EXERCISE OF ITS SOVEREIGN RIGHTS AND TO SECURE FROM ITS ADVANTAGES OF ANY KIND BEING PROHIBITED.

6. INDIA, RESPONDING TO THE CHAIRMAN'S TEXT AND EARLIER COMMENTS, RESPONDED WITH THE FOLLOWING:

EVERY STATE HAS FULL PERMANENT SOVEREIGNTY OVER ALL ITS NATURAL RESOURCES, WEALTH AND ECONOMIC ACTIVITIES, INCLUDING THE RIGHTS OF NATIONALIZATION, AND THE RIGHTS TO REGULATE AND EXERCISE AUTHORITY OVER FOREIGN INVESTMENT AND THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS LIMITED OFFICIAL USE

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WITHIN ITS NATIONAL JURISDICTION, AND TO ENTER FREELY INTO FOREIGN INVESTMENT AGREEMENTS. IN RESPECT OF THE FOREGOING RIGHTS, ALL STATES SHALL FULFILL IN GOOD FAITH THEIR INTERNATIONAL OBLIGATIONS. ALL STATES SHALL REFRAIN FROM ANY FORM OF COERCION AGAINST STATES EXERCISING THESE RIGHTS.

7. GROUP B, REACTING TO THE INDIAN TEXT, VOICED CONCERN OVER THE NOTION OF PERMANENT SOVEREIGNTY OVER ECONOMIC ACTIVITIES, THE TREATMENT OF WEALTH, THE ABSENCE OF THE OBLIGATION TO FULFILL INVESTMENT AGREEMENTS IN GOOD FAITH, AND THE TIE BETWEEN COERCION AND PERMANENT SOVEREIGNTY.

8. IN RESPONSE TO THE CHAIRMAN'S TEXT, U.S. DEL AND

FRENCH DEL (CHOLLET) OBJECTED TO THE REFERENCE TO
COERCION IN THE NATIONALIZATION TEXT, AND
URGED THAT A GENERAL REFERENCE TO COERCION APPEAR ELSE-
WHERE IN THE CHARTER. GROUP B, HOWEVER, DID NOT REJECT
THE TEXT FOR FURTHER NEGOTIATIONS.
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